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REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS OBSERVER MISSION IN EL SALVADOR

Addendum

1. Part VI A of the Secretaty-General's report dated 21 May 1993 (S/25812) contains a number of references to the proposal of 13 October 1992 on land transfers. This proposal was made to the Government and to the Frente Farabundo Martí para la Liberación Nacional (FMLN) and accepted separately within a few days by each of the two parties. It is a supplement to the peace accords signed in Mexico City on 16 January 1992 and should be deemed an integral part of those accords.

2. In order to facilitate the Security Council's consideration of the report, the text of the proposal, together with a summary, is circulated herewith for the information of the members of the Security Council.

Annex I

[Original: Spanish]

I. INTRODUCTION

1. The proposal in this document is being made within the framework of United Nations verification of compliance by both Parties with the agreements between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) as at 15 September 1992, according to the timetable adjusted on 19 August 1992.

2. After examining the agricultural situation in El Salvador, the short-term availability of and future prospects for land and financial resources, the economic constraints facing the country and the conditions imposed by donor countries, and taking into account the needs of former combatants of both parties and of current landholders in conflict zones, the Secretary-General is submitting the following proposal for the implementation of the relevant parts of the agreements.

II. CONSIDERATIONS

A. Potential beneficiaries

3. Former combatants of FMLN and the Salvadorian armed forces aged 16 years or over on D-Day (1 February 1992) will be beneficiaries of the land transfer, irrespective of their family situation. Landholders of lands within former conflict zones, as defined in the Agreement, including returnees living in these zones, would also be beneficiaries.

4. Land will be transferred to a maximum of 47,500 people (broken down approximately as follows: 7,500 former combatants of FMLN, including the war-disabled; 15,000 former combatants of the Salvadorian armed forces; and 25,000 landholders).

B. Size of lots

5. Taking into account the various factors which determine the viability of a plot of land for supporting a family, such as soil type, productive potential, type of production, technology, employment, market, infrastructure, etc., it has been decided to apply the criterion of the Salvadorian Institute for Agrarian Reform (ISTA) whereby the size of a lot varies according to soil type as follows:

Type of soil	Size
I-II	2 manzanas
III-IV	3 manzanas
V-VI	5 manzanas
VII-VIII	7 manzanas

According to this criterion, 2 manzanas of soil types I and II would be equivalent to 5 manzanas of types V and VI.

6. If land owners are willing to sell, landholders will remain on the lots they currently occupy, provided these are no larger than the maximum established in the above table and no smaller than half that size. If they are resettled, they would be assigned equivalent land using the same criteria.

C. Payment terms and award of land

7. The Government of El Salvador will have to ensure that former combatants of both Parties and landholders are able to secure the amount of land indicated above.

8. Based on the average price paid by the Land Bank, total estimated resources will be sufficient to purchase the amounts of land specified. Measures would be taken to protect the market against speculation.

9. With regard to the payment terms for beneficiaries, the terms laid down by the agrarian reform (payment over 30 years, 6 per cent annual interest rate and 4-year grace period) are considered acceptable. If revolving funds are established, efforts will be made to ensure that the benefits are distributed equitably.

10. The decision as to whether land should be awarded on an individual or group basis should, in principle, rest with beneficiaries, bearing in mind that beneficiaries of the agrarian reform are clearly given this choice. In the case of lands purchased through the Land Bank, the pro indiviso formula could be used if some buyers want to form associations. Both the associative and the pro indiviso formulas will expedite the transfer and assignment of lands. However, in some cases it may be necessary to comply with the conditions laid down by donor countries for the use of resources.

III. CONSEQUENCES

A. Total land required and land currently available

11. For the purpose of calculating land requirements and taking into account the distribution of the different lands in El Salvador, the average size of the lots to be awarded will be taken to be 5 manzanas. Given the number of potential beneficiaries, between 175,000 and 237,500 manzanas would be required, depending on whether landholders have, on average, the minimum or the maximum permitted number of manzanas.

12. Available land is estimated at 85,000 manzanas. This includes State lands already verified (25,000 manzanas), lands in excess of 245 hectares (13,000 manzanas), lands offered for sale to the Land Bank in the municipalities given priority under the National Reconstruction Plan (27,000 manzanas) and lands offered for sale to the Land Bank in the rest of the country (20,000 manzanas).

13. The total land available will be determined once the Special Agrarian Commission of the National Commission for the Consolidation of Peace (COPAZ) has completed verification of the land inventory submitted by FMLN.

B. Total resources required and resources currently available

14. Using as a basis the average price of sales conducted through the Land Bank up to 31 August 1992, namely $600 per manzana, the total resources required would be between $105 million and $143 million. The amount actually disbursed will be less if more State lands become available.

15. Resources of approximately $46 million will become available between now and February 1993, comprising external funding ($23 million) and internal funding equivalent to the estimated value of State lands ($23 million). Additional external resources totalling $12 million would become available in February 1993.

16. As the programme advances and lands are transferred, the Secretary-General will use his good offices to support efforts to obtain additional financial resources as a substantive contribution to the peace process.

C. Phases for the land transfer

17. The Government of El Salvador will draw up a land transfer programme immediately according to the following timetable:

(a) First phase (emergency plan): October 1992 to January 1993. During the first phase, which would cover approximately 15,400 beneficiaries, priority will be given to former combatants of FMLN, who would obtain all the

land still available once the situation of current landholders had been legalized. Land would be assigned to former combatants in the following order:

(i) Forty-two State properties which have already been verified (where there are already landholders);

(ii) Other State properties (ISTA or others);

(iii) At the same time, negotiations would be conducted for private properties: those already verified (63 out of 115), those on the FMLN inventory giving priority to the list of 537) and those already offered to the Land Bank.

The $46 million available in this phase would make it possible to transfer 77,000 manzanas at an average price of $600 per manzana. This involves 38,000 manzanas of State-owned land of an estimated value of $23 million and the purchase of 38,500 manzanas.

(b) Second phase: February to April 1993, subject to land availability. During this phase, $12 million would be available for the purchase of 20,000 manzanas. Lands totalling 8,000 manzanas would be available and an additional 12,000 manzanas would be required. Using the same average price, it would be possible to transfer land to a maximum of 4,000 beneficiaries, of whom 1,600 could be settled immediately while the remaining 2,400 would have to wait until the additional 12,000 manzanas became available. On lands where the situation of current landholders has not been legalized, land would be divided equally between former combatants of FMLN, if there are any left over from the first phase, and former combatants of the Salvadorian armed forces.

(c) The third phase would begin once the second phase was complete. In this phase, land would be assigned to the remaining 28,100 beneficiaries. Approximately 140,500 manzanas would have to be purchased, for which $85 million in additional funding would be required.

Former combatants of the Salvadorian armed forces will obtain land where there are no landholders until they have all been settled. Thereafter, landholders on lands whose owners do not wish to sell will be resettled.

18. In order to guarantee the tenure of beneficiaries who have been awarded land, pending completion of the entire legalization process, it is recommended that all beneficiaries be given temporary deeds of transfer as provisional title to the land.

19. Vigorous efforts and good faith on the Government's part will be needed to meet these targets. To permit the rapid transfer of lands, mainly through purchase and sale contracts, it is recommended that the operational capacity of the Land Bank and ISTA and of the Financiera Nacional de Tierras Agrícolas (FINATA) be strengthened if necessary. It is assumed that the Government of

El Salvador would bear the operating costs. Technical assistance in implementing the land transfer programme could be requested from the World Bank and the Food and Agriculture Organization of the United Nations (FAO).

D. Organizational plan

20. In view of the exceptional nature of the land transfer programme under the Peace Agreement and the urgent need to implement it, a management and coordination unit should be set up as the executive authority for directing and coordinating the action of the Ministry of Agriculture and Livestock. ISTA, the Land Bank and FINATA in all matters related to the implementation of the land transfer programme.

21. In addition, to facilitate implementation of the programme, an oversight committee will have to be set up comprising representatives of the Parties (the Government of El Salvador and FMLN) and of COPAZ (in the person of the acting coordinator of the Special Agrarian Commission). The United Nations Observer Mission in El Salvador (ONUSAL) will also be represented on the committee in order to provide verification and advisory services. The committee's functions will include cross-checking information on landholders and former combatants and monitoring implementation of the programme. It may need an auxillary body to assist it in identifying lands for purchase and sale and may propose legal, administrative or other measures to facilitate the land transfer.

22. The activities of this committee are without prejudice to the mandate of the Special Agrarian Commission of COPAZ, whose verification work it complements.

23. The chief of the management and coordination unit will immediately begin drawing up the emergency plan to implement the land transfer programme without delay, setting targets and deadlines. This plan, and the overall programme, will be submitted to the above-mentioned oversight committee for consideration to ensure the full cooperation of all parties concerned.

E. Guarantees after the cessation of the armed conflict

24. Since the land transfer process will continue after the cessation of the armed conflict is complete, pending a satisfactory legal solution of the definitive land tenure system in conflict zones, the Government will guarantee landholders in these zones that they will not be evicted and that the status quo will be preserved until the situation is resolved. It will inform landowners of this decision, taken within the framework of the Peace Agreement, by means of a widely circulated public notice and, if necessary, will issue a decree to this effect. FMLN, for its part, will do its utmost to prevent any illegal occupation of lands.

25. Former combatants of FMLN will receive a certificate of land transfer entitlement when they are reintegrated into civil, institutional and political life. Former combatants will be able to apply to the oversight committee, through their representatives, to settle any outstanding cases of land transfer.

Annex II

[Original: Spanish]

Summary of the land transfer proposal

Relevant considerations

Total number of potential beneficiaries

47,500 maximum (7,500 former combatants of FMLN, 15,000 former combatants of the Salvadorian armed forces, 25,000 landholders).

Size of lots

Type of soil	Size (in manzanas)
I-II	2
III-IV	3
V-VI	5
VII-VIII	7

If landowners are willing to sell, landholders will remain on the lots they currently occupy, provided these are no larger than the maximum size given in the above table and no smaller than half that size.

Total land required (for purposes of calculation, the average size of the lots to be awarded to former combatants will be taken to be 5 manzanas and the average size of landholders' lots will be taken to be between 5 manzanas maximum and 2.5 manzanas minimum):

175,000 to 237,500 manzanas (depending on the average maximum and minimum size of the lots occupied by landholders)

(a) 112,500 manzanas (22,500 x 5 manzanas, taken to be the average size of lots for former combatants);

(b) 62,500 manzanas (25,000 x 2.5 manzanas, taken to be the minimum size of landholders' lots;

(c) 125,000 manzanas (25,000 x 5 manzanas, taken to be the maximum size of landholders' lots).

Value of the land to be transferred (for purposes of calculation, the average price of sales conducted through the Land Bank up to 31 August 1992 will be used. Namely, $600 at an exchange rate of $1 = 8.5 colones):

$105 to $142 million

Land available or which could be purchased:

Approximately 85,000 manzanas in four categories:

(a) Verified State lands (25,000 manzanas);

(b) Lands in excess of 245 hectares (13,000 manzanas);

(c) Lands offered to the Land Bank (27,000 manzanas in conflict zones);

(d) Lands offered to the Land Bank (20,000 manzanas outside conflict zones).

Resources which will become available between now and February 1993

External resources:

Immediately available: $23 million (United States Agency for International Development)

Available in February 1993: $12 million (European Economic Community)

Internal resources:

State lands and lands in excess of 245 hectares (38,000 manzanas at $600): $23 million

Three phases of programme implementation:

(a) First phase: October 1992-January 1993

Resources available: $46 million

Land which can be purchased: 77,000 manzanas

Beneficiaries: 15,400 people

Distribution of land: Former combatants of FMLN will obtain all land where there are no landholders.

Note: 8,000 manzanas remain available for the second phase (85,000 manzanas minus the 77,000 manzanas used in this phase).

(b) Second phase: February to April 1993, subject to land availability.

Resources available: $12 million

Land which can be purchased: 20,000 manzanas

Beneficiaries: A maximum of 4,000 people (of whom 1,600 can be settled immediately on the 8,000 manzanas available; the remaining 2,400 will have to wait until an additional 12,000 manzanas become available).

Distribution of land: All land where there are no landholders will be divided equally between FMLN and the Salvadorian armed forces.

(c) Third phase: following completion of the second phase.

Remaining beneficiaries: 28,100 people

Land needing to be purchased: 140,500 manzanas

Additional resources required: $85 million

Distribution of land: Former combatants of the Salvadorian armed forces will obtain land where there are no landholders until they have all been settled. Thereafter, landholders on lands whose owners do not wish to sell will be resettled.

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REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS OBSERVER MISSION IN EL SALVADOR

Addendum

Section V of the Secretary-General's report dated 21 May 1993 (S/25812) describes the action taken by the Secretary-General in connection with the report of the Commission on the Truth following its submission by the Commission on 15 March 1993. As foreseen in paragraph 55 of the Secretary-General's report, the United Nations analysis of the Commission's recommendations is circulated herewith as a document of the Security Council.

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Annex

[Original: Spanish]

Analysis of the recommendations contained in the report of the Commission on the Truth

The recommendations contained in the report of the Commission on the Truth are set out below, together with a brief analysis of the measures needed to implement them. In the interests of clarity, the recommendations are listed in the order in which they appear in the report. Each recommendation is accompanied by details of the persons or institutions to whom it is addressed and who would be responsible for its implementation or for taking the appropriate action (for instance, a legislative proposal by the Government; action proposed by the Frente Farabundo Martí para la Liberación Nacional (FMLN) in the National Commission for the Consolidation of Peace (COPAZ)), legislative action required and the time-frame necessary for its implementation.

There are two appendices to this document. The first gives details of the human rights recommendations made by the United Nations Observer Mission in El Salvador (ONUSAL) and taken up in turn by the report of the Commission on the Truth, which calls for their implementation. The second is a working paper listing the principal constitutional or legal provisions that would need to be amended in order to comply with the recommendations.

I. RECOMMENDATIONS INFERRED DIRECTLY FROM THE RESULTS OF THE INVESTIGATION

1. Dismissal from their posts and discharge from the armed forces of officers whose names appear in the report and who are personally implicated in the perpetration or cover-up of the cases reported, or who did not fulfil their professional obligation to initiate or cooperate in the investigation and punishment of serious acts of violence (I.A)

(a) Addressed to: the Government of El Salvador

(b) Legislative action required: an administrative measure

(c) Time-frame: immediate

Remarks: It is our understanding that only 10 of the officers mentioned in the report will remain in active service once implementation of the Ad Hoc Commission's recommendations is complete.

2. Dismissal of civilian officials in the civil service and the judiciary who are named in the report and who, acting in their professional capacity, covered up serious acts of violence or failed to discharge their responsibilities in the investigation of such acts (I.B)

(a) Addressed to: the Government of El Salvador (for civil service officials) and the judiciary (for officials of the judiciary)

(b) Legislative action required: an administrative measure

(c) Time-frame: immediate

Remarks: Three officials of the judiciary are involved: one senior official employed on a temporary contract and two judges.

3. Disqualification by law from holding public office for persons referred to in the above recommendations, and for any other persons implicated in the perpetration of the acts of violence described, including the civilians and members of the FMLN Command named in the findings on individual cases. The persons concerned should be disqualified from holding any public post or office for a period of not less than 10 years, and should be disqualified permanently from any activity related to public security or national defence (I.C)

(a) Addressed to: the Government of El Salvador, FMLN, COPAZ and the Legislative Assembly

(b) Legislative action required: no legislative measures possible, only a political decision. Some people have suggested the possibility of a constitutional amendment.

(c) Time-frame: only a political solution is appropriate, possibly in the form of an undertaking adopted within COPAZ or an agreement by COPAZ itself urging the persons named to refrain from holding or applying for any public post.

Remarks: Although the report recommends that COPAZ should prepare a preliminary legislative draft to be submitted to the Legislative Assembly for early approval, such an approach would affect essential provisions of the Constitution relating to political rights. This recommendation conflicts with that made in section III.B.8 of the report, concerning the ratification of international human rights instruments under which citizens cannot be deprived of their political rights in the manner recommended by the Commission on the Truth.

4. Resignation of the current members of the Supreme Court of Justice to enable the constitutional reform concerning the election of judges to the Court to be implemented immediately (I.D.(a))

(a) Addressed to: members of the Supreme Court of Justice

(b) Legislative action required: the resignation of members of the Court

(c) Time-frame: immediate

Remarks: The recommendation is not worded in such a way as to make it binding on the Government of El Salvador. Its implementation depends entirely on the willingness of the members of the Court to resign from their posts; for its part, the full Court has already announced that its members will not resign.

5. Amendment of the National Council of the Judiciary Act so that members of the Council can be dismissed by the Legislative Assembly only for precise legal causes (I.D.(b))

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: amendment of the National Council of the Judiciary Act

(c) Time-frame: medium term

6. Amendment of the Career Judicial Service Act so that only those judges who, according to a rigorous evaluation made by the National Council of the Judiciary, have demonstrated judicial aptitude, efficiency and concern for human rights and offer every guarantee of independence, judicial discretion, honesty and impartiality in their actions, may remain in the career judicial service (I.E)

(a) Addressed to: the Government of El Salvador, the Legislative Assembly and COPAZ

(b) Legislative action required: inclusion of an appropriate provision in the new Career Judicial Service Act

(c) Time-frame: medium term

Remarks: Under the Constitution, it is the Supreme Court that punishes judges. The Council could only recommend to the Court that penalties be applied.

II. ERADICATION OF STRUCTURAL CAUSES LINKED DIRECTLY TO THE ACTS EXAMINED

1. Full implementation of the peace agreements (II)

(a) Addressed to: the Government of El Salvador and FMLN

(b) Legislative action required: none

(c) Time-frame: none

2. Reforms in the armed forces (II.A.)

2.1 Appointment of a special committee of the Legislative Assembly to supervise the transition to the new model of the armed forces (II.A.1,2)

(a) Addressed to: the Legislative Assembly and COPAZ

(b) Legislative action required: a political decision by the Legislative Assembly

(c) Time-frame: immediate

2.2 Comprehensive review of the military legislation in force (II.A.2,3,4)

(a) Addressed to: COPAZ and the Legislative Assembly

(b) Legislative action required: a legislative decree and administrative measures

(c) Time-frame: immediate

Remarks: Legislative measures have already been adopted which include amendments to the relevant articles of the Constitution. Laws have also been adopted on military service and armed forces reserves, the National Public Security Academy, the National Civil Police, the State Intelligence Agency and the Ad Hoc Commission on the armed forces. In addition, the relevant articles of the procedural law applicable to states of emergency and the Code of Military Justice have been repealed. On 12 November 1992, ONUSAL sent the Ministry of Defence a list of the additional legislative amendments that need to be adopted in order to conclude the process of adapting existing armed forces legislation. Copies of that letter were sent to the Minister of the Presidency, the Minister of Justice and COPAZ. The matter is still pending on the agenda of COPAZ. In addition to the legislative amendments already proposed by ONUSAL, there are the recommendations made in the report of the Commission on the Truth concerning the amendment of other aspects of army regulations and the Code of Military Justice.

2.3 Inclusion of the study of human rights in the curricula of military schools (II.A.5)

(a) Addressed to: the Government of El Salvador

(b) Legislative action required: an administrative decision

(c) Time-frame: immediate

2.4 Military training abroad, on courses based on a doctrine of democracy and respect for human rights (II.A.6)

(a) Addressed to: the Government of El Salvador

(b) Legislative action required: an administrative decision

(c) Time-frame: immediate

2.5 Priority to be given to the eradication of any relationship between members of the armed forces and paramilitary or illegal groups (II.A.7)

(a) Addressed to: the Government of El Salvador

(b) Legislative action required: an administrative decision

(c) Time-frame: immediate

Remarks: It should be noted that, as stipulated in the agreements, civil defence units have been duly disbanded and the new system of armed forces reserves has already replaced the territorial service, which has also been disbanded. COPAZ is currently considering the preliminary bill for the regulation of private security services.

3. Reforms in the area of public security (II.B)

Scrupulous observance of the guidelines for the National Civil Police

(a) Addressed to: the Government of El Salvador

(b) Legislative action required: an administrative decision

(c) Time-frame: immediate

Remarks: It should be noted that the constitutional reforms have already relieved the armed forces of public security tasks, which will be the responsibility of the National Civil Police. The territorial deployment of the latter has already begun. However, the National Police, which is responsible for public security during the transitional period, is still run by military personnel in active service, even though it is answerable to the President of the Republic. Moreover, its ranks have been supplemented with former members of the public security forces that have been disbanded (the National Guard and the Treasury Police) and with soldiers demobilized from the rapid deployment infantry battalions. Many of these soldiers are joining the National Public Security Academy.

4. Investigation of illegal groups (II.C)

Investigation, with outside assistance, to ensure that they are disbanded

(a) Addressed to: the Government of El Salvador

(b) Legislative action required: an administrative decision

(c) Time-frame: immediate

Remarks: It should be noted that, as stipulated in the agreements, civil defence units have been duly disbanded and the new system of armed forces reserves has already replaced the territorial service, which has also been disbanded. COPAZ is currently considering the preliminary bill for the regulation of private security services.

III. INSTITUTIONAL REFORMS TO PREVENT THE REPETITION OF SUCH ACTS

A. Administration of justice

1. Further judicial reform (III)

(a) Addressed to: the Government of El Salvador, the Legislative Assembly and the Supreme Court

(b) Legislative action required: various constitutional amendments and amendments to secondary legislation which derive from all the specific recommendations. Discussion and adoption of a new Penal Code and Code of Criminal Procedure on the basis of the preliminary drafts already submitted to the Legislative Assembly. Administrative measures within the judicial system

(c) Time-frame: immediate and medium term

Remarks: In the third week of April 1993, the 11 members of the National Council of the Judiciary were elected, by consensus, in the Legislative Assembly. On beginning their work, they announced that they would carry out an investigation of the competence of judges.

2. De-concentration of functions of the Supreme Court and its President: analysis of whether the Constitution should be amended (III.A.1)

(a) Addressed to: the Government of El Salvador and COPAZ

(b) Legislative action required: consideration of the need for a constitutional amendment

(c) Time-frame: immediate and medium term

3. Appointment and removal of judges by the National Council of the Judiciary (III.A.2)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: a constitutional amendment, National Council of the Judiciary Act and Career Judicial Service Act

(c) Time-frame: immediate and medium term

4. Administrative accountability of judges to the National Council of the Judiciary (III.A.3)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: amendment of the Organic Law of the Judiciary and adoption of a new Career Judicial Service Act

(c) Time-frame: Immediate and medium term

5. Special independent body responsible for authorizing and regulating the professions of lawyer and notary (III.A.4)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: amendment of the Organic Law of the Judiciary

(c) Time-frame: immediate

6. Creation of new courts and improvement of judges' salaries (III.A.5)

(a) Addressed to: the Government of El Salvador, COPAZ, the Legislative Assembly and the judiciary

(b) Legislative action required: amendment of the Organic Law of the judiciary or adoption of a legislative decree creating new courts

(c) Time-frame: immediate

7. Reinforcement of the application of the right to due process (III.A.6)

(a) Addressed to: the Government of El Salvador, COPAZ, the Legislative Assembly and the judiciary

(b) Legislative action required: adoption of a new Penal Code and a new Code of Criminal Procedure. Administrative oversight measures (in the police and in the judicial system)

(c) Time-frame: immediate

Remarks: Preliminary drafts of both Codes have already been submitted by the Government of El Salvador to the Legislative Assembly

8. Priority to be given to the Judicial Training School (III.A.7)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: amendment of the National Council of the Judiciary Act and adoption of a new Career Judicial Service Act.

(c) Time-frame: immediate

B. Protection of human rights

1. Implementation of ONUSAL recommendations (III.B)

The recommendations made by the ONUSAL Human Rights Division must be implemented by the parties as stipulated in the San José Agreement. Appendix I summarizes the relevant recommendations made in the sixth report of the ONUSAL Human Rights Division.

2. Strengthening of the Office of the National Counsel for the Defence of Human Rights (III.B.1)

(a) Addressed to: the Office of the National Counsel for the Defence of Human Rights

(b) Legislative action required: none; administrative measures

(c) Time-frame: immediate

Remarks: the Office of the National Counsel for the Defence of Human Rights has announced to the public its commitment to comply with the recommendations addressed to it. The National Counsel has sent the Secretary-General a letter to this effect. The Human Rights Division will liaise directly with the National Counsel in implementing this recommendation.

3. Measures to make the remedies of amparo and habeas corpus truly effective: broadening the competence of judges and making express provision that these remedies cannot be suspended as guarantees under any circumstances (III.B.2)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: a constitutional amendment for the first (competence of judges). Amendment of the Constitutional Procedures Act

(c) Time-frame: immediate

4. Constitutional force of human rights provisions and of international human rights instruments (III.B.3)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: a constitutional amendment and/or ratification of or accession to the international human rights treaties referred to in the report

(c) Time-frame: medium term

5. Changes in the system of administrative detention (III.B.4)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: adoption of a new Penal Code and Code of Criminal Procedure. Repeal of the 1886 Police Act

(c) Time-frame: immediate

6. Expansion of the system of information on detainees with the participation of the Office of the National Counsel for the Defence of Human Rights (III.B.5)

(a) Addressed to: the Office of the National Counsel for the Defence of Human Rights

(b) Legislative action required: only administrative measures

(c) Time-frame: immediate

7. New categories of crimes (III.B.6)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: adoption of a new Penal Code covering such crimes

(c) Time-frame: immediate

8. Material compensation for victims of human rights violations (III.B.7)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: adoption of a new Code of Criminal Procedure providing for an expeditious procedure. Special fund

(c) Time-frame: immediate

9. Ratification of international instruments and recognition of the compulsory jurisdiction of the Inter-American Court of Human Rights (III.B.8)

(a) Addressed to: the Government of El Salvador and the Legislative Assembly

(b) Legislative action required: resolutions of the Legislative Assembly

(c) Time-frame: immediate

C. National Civil Police

1. Putting into practice the investigation mechanism within the National Civil Police and dissolving the Commission for the Investigation of Criminal Acts (III.C)

(a) Addressed to: the Government of El Salvador, COPAZ and the Legislative Assembly

(b) Legislative action required: administrative measures

(c) Time frame: immediate

IV. STEPS TOWARDS NATIONAL RECONCILIATION

1. Special fund for the compensation of victims (IV.A.1,2,3,4)

(a) Addressed to: the Government of El Salvador; the United Nations (which should promote and coordinate action to obtain international contributions)

(b) Legislative action required: a legislative decree (art. 167, para. 4, of the Constitution) or an act adopted by the Legislative Assembly

(c) Time-frame: immediate (one month)

Remarks: The Commission establishes some characteristics of the Fund, inter alia, that 1 per cent of all external assistance should be set aside for this purpose. The Government cannot be required to comply with this recommendation, since it is not within its powers but depends on donor States. A formula reflecting this situation must be explored in order to ensure its implementation.

2. Forum for Truth and Reconciliation

(a) Addressed to: COPAZ

(b) Legislative action required: secondary legislation or an administrative order

(c) Time-frame: immediate (one month)

3. Construction of a national monument bearing the names of the victims, recognition of the good name of the victims and institution of a national holiday

(a) Addressed to: the Government of El Salvador and the Legislative Assembly

(b) Legislative action required: a legislative decree and/or an act

(c) Time-frame: immediate.

Appendix I

Recommendations of the ONUSAL Human Rights Division

1. Ratification of international human rights instruments

   (a) Addressed to: the Government of El Salvador and the Legislative Assembly

   (b) Legislative action required: resolutions of the Legislative Assembly

   (c) Time-frame: immediate

   Remarks: Some people consider certain provisions of the instruments in question to be incompatible with the Constitution (for example, ILO Convention No. 87). In this case, on depositing the instrument of ratification, a declaration of safeguards can be made, based on wording agreed to in the tripartite commission of the Forum For Economic and Social Consultation.

2. Structural and functional reform of the judiciary

   (a) Addressed to: the Government of El Salvador, the Legislative Assembly and the judiciary

   (b) Legislative action required: to be considered in terms of the specifics of the reform. Some amendments to the Constitution and to secondary legislation will be needed as a result of specific aspects of these recommendations.

   (c) Time-frame: medium term

3. Establishment of a special commission of inquiry to investigate summary executions

   (a) Addressed to: the Government of El Salvador

   (b) Legislative action required: a legislative decree

   (c) Time-frame: immediate

4. Measures to make habeas corpus and amparo effective and accessible

   (a) Addressed to: the Government of El Salvador and the Legislative Assembly

   (b) Legislative action required: amendment of the Constitution and of the Constitutional Procedures Act

   (c) Time-frame: medium term

5. Compensation fund for victims

Remarks: Totally in line with the corresponding recommendation of the Commission on the Truth.

6. Improvement of the composition and powers of the National Council of the Judiciary and independence of the Judicial Training School

(a) Addressed to: the Government of El Salvador and the Legislative Assembly

(b) Legislative action required: amendment of the Constitution and of the National Council of the Judiciary Act

(c) Time-frame: immediate and medium term

7. Elimination of extrajudicial confession

(a) Addressed to: the Government of El Salvador and the Legislative Assembly

(b) Legislative action required: to be considered in the new Code of Criminal Procedure

(c) Time-frame: immediate

8. Definition of torture and enforced disappearance as offences in special criminal legislation

(a) Addressed to: the Government of El Salvador and the Legislative Assembly

(b) Action required: to be included in the new Penal Code

(c) Time-frame: immediate

9. Legislation regulating the conduct of law enforcement officials

(a) Addressed to: the Government of El Salvador and the Legislative Assembly

(b) Legislative action required: secondary legislation

(c) Time-frame: immediate

10. Abolition of the practice of arbitrary detention for petty misdemeanours

(a) Addressed to: the Government of El Salvador and the Legislative Assembly

(b) Legislative action required: repeal of the 1886 Police Act

(c) Time-frame: immediate

11. Temporary application of the Act governing the procedure for administrative detention or the imposition of administrative fines

    (a) Addressed to: the Government of El Salvador

    (b) Legislative action required: an administrative decision

    (c) Time-frame: immediate

12. Amendment of the disciplinary regime under the Career Judicial Service Act so that the Court or its President can investigate formally any irregularities or violations of due process

    (a) Addressed to: the Government of El Salvador and the Legislative Assembly

    (b) Legislative action required: secondary legislation

    (c) Time-frame: immediate

13. Authorization of a visit by the ILO Committee on Freedom of Association

    (a) Addressed to: the Government of El Salvador

    (b) Action required: an administrative order

    (c) Time-frame: immediate

14. Investigations by the Supreme Court of Justice of violations of due process

    (a) Addressed to: the Supreme Court of Justice

    (b) Legislative action required: an administrative order

    (c) Time-frame: immediate

15. Granting of legal recognition to associations and trade unions

    (a) Addressed to: the Government of El Salvador

    (b) Legislative action required: an administrative decision

    (c) Time-frame: immediate/ongoing

16. Military training

    (a) Addressed to: the armed forces

    (b) Legislative action required: an administrative order

    (c) Time-frame: immediate/ongoing

17. Recovery of military weapons

(a) Addressed to: the Government of El Salvador

(b) Legislative action required: a legislative decree

(c) Time-frame: immediate

18. Budgetary autonomy of the National Counsel's Office

(a) Addressed to: the Government of El Salvador and the Legislative Assembly

(b) Legislative action required: secondary legislation

(c) Time-frame: immediate

19. Facilities for and non-obstruction of NGO activities

(a) Addressed to: the Government of El Salvador

(b) Legislative action required: an administrative order

(c) Time-frame: immediate/ongoing

Appendix II

Principal legal provisions to be amended

1. Constitutional amendments

   1. Competence of judges and magistrates to hear the remedy of habeas corpus: amend article 174, article 182 (1) and article 247.

   2. Constitutional force of human rights provisions. Two non-exclusive alternatives: ratify pending treaties or introduce a constitutional provision giving constitutional force to the international human rights instruments to which El Salvador is a party.

   3. Disciplinary regime of the National Council of the Judiciary: amend article 187 to give the Legislative Assembly the authority to remove or dismiss members of the Council by a specified majority.

   4. System of administrative detention: amend article 14 by deleting administrative arrest.

   5. ONUSAL recommendations: some recommendations coincide (i.e., habeas corpus). Also consider possible amendments to articles 131 and 182 with respect to the appointment of magistrates and judges.

2. Amendments to secondary legislation

   1. Disciplinary regime of the National Council of the Judiciary. Amend articles 11 and 49 of the National Council of the Judiciary Act by specifying the legal causes for dismissal of members of the Council and establishing a special procedure in the Legislative Assembly in keeping with the powers conferred upon the Assembly by article 132 of the Constitution.

   2. Evaluation of judges:

      (a) Adoption of the new Career Judicial Service Act that incorporates suitable criteria for evaluating judges and magistrates, taking into account the role of the Judicial Training School. Moreover, the new Act should specify more precise legal causes for the dismissal or removal of judges and magistrates;

      (b) Adoption of a special provisional legislative decree that would make it possible to conduct an immediate evaluation of judicial officials with a view to ascertaining whether current officials are really suited for service in the judiciary, whether their work is independent and efficient and whether they have demonstrated a concern for human rights.

   3. Comprehensive review of military legislation: consider amendments to various military laws, in particular the Organic Law on National

Defence, the Code of Military Justice and the laws on control of arms and explosives.

4. "Due obedience":

(a) Repeal article 173 of army regulations;

(b) Amend the Code of Military Justice by expressly incorporating article 40 (2) (c) of the Penal Code;

(c) Repeal paragraphs 4 and 10 of article 166 of the Code of Military Justice.

5. Punishment of abuses of military authority:

(a) Amend the Code of Military Justice by incorporating a new penal category for punishing military leaders and commanders who force their subordinates, through "due obedience", to act in violation of the law and of human rights;

(b) Incorporate in such amendments, as accessory penalties, discharge from military service and ineligibility to resume military functions for the duration of the penalty.

6. Disbanding of illegal armed groups:

(a) Adoption of a new act on private security bodies or an act regulating private security services. A bill is being considered in the Legislative Assembly;

(b) Adoption of a new act on the special protection of high-risk persons. A bill is being considered in the Legislative Assembly.

7. Adminstration of court resources:

(a) Amend the Organic Law of the Judiciary in order to give judges the authority to administer the resources of their courts;

(b) Amend the National Council of the Judiciary Act by expanding the Council's powers so that its members can oversee the administration of resources;

(c) The foregoing involves amending the legislation on the supervision of State property, the budgetary system and the Organic Law of the Court of Audit.

8. Concentration of functions in the Supreme Court of Justice and in its President:

(a) Amend the Organic Law of the Judiciary;

(b) Adoption of the new Career Judicial Service Act.

9. Appointment and removal of judges and magistrates: adoption of the new Career Judicial Service Act that will establish, on the basis of the necessary constitutional reform, the competence of the National Council of the Judiciary to appoint, remove or dismiss judges and magistrates.

10. Granting authorization to practise as a lawyer or notary: amend article 51, paragraph 3, of the Organic Law of the Judiciary to give the National Council of the Judiciary the power to do this.

11. Creation of new courts (two alternatives):

    (a) Amend article 146 of the Organic Law of the Judiciary;

    (b) Adopt a legislative decree creating new courts.

12. Extrajudicial confession: adoption of the new Code of Criminal Procedure.

13. Judicial Training School: amend the National Council of the Judiciary Act and adopt the new Career Judicial Service Act in order to strengthen the Judicial Training School by giving it the authority to evaluate judicial officials with a view to the admission to the career judicial service, promotion, suspension, transfer, removal or dismissal of judges and magistrates. This involves the corresponding constitutional reform.

14. Competence of judges and magistrates to hear remedies of habeas corpus and amparo: in addition to amending the Constitution, amend the Constitutional Procedures Act.

15. System of administrative detention: promulgate, with the appropriate contents, the new Code of Criminal Procedure and repeal the 1886 Police Act. Amend articles 496 ff. of the Penal Code on the regime for misdemeanours in order to give justices of the peace the competence to consider all categories of misdemeanours.

16. Establishment of new categories of crimes: amend the Penal Code.

17. Establishment of a simple, swift and accessible remedy for material compensation for harm suffered as a result of a human rights violation: amend the Code of Criminal Procedure so that the criminal proceedings guarantee the speedy and effective exercise of criminal indemnity action and the speed of the criminal trial.

18. Material compensation: adoption of the new act establishing the fund for the protection of victims of violence.

19. Commission for the Investigation of Criminal Acts: repeal the Act establishing the Commission for the Investigation of Criminal Acts.

20. Ratification of human rights instruments.

21. Declaration of a national holiday: adopt a legislative decree declaring the national holiday recommended by the Commission.